IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1985 OF 2004
ALONG WITH
CRIMINAL WRIT PETITION NO. 1986 OF 2004
ALONG WITH
CRIMINAL WRIT PETITION NO.1987 OF 2004

Shri Yogesh Wadhwana & Others ...Petitioners.

V/s

M/s Krishna Texport & Capital
Markets Ltd. & Anr. ...Respondents.

CORAM: V.M.KANADE,J.
DATE: 16th March, 2005

P.C.:

1. Petitioners in all these Writ Petitions are prosecuted by the respondents for an offence under section 138 of the Negotiable Instruments Act. A complaint was filed against them in the Court of Metropolitan Magistrate, 40th Court, Girgaon, Mumbai and process was issued against them. Petitioners preferred an application for recall of process before the Metropolitan Magistrate which was rejected. Thereafter, Revision Application was filed in the Sessions Court challenging the order of the learned Magistrate which was also rejected on 21/1/1999. Thereafter, another application was filed on a different ground for recalling the process, which was rejected by the learned Magistrate on 20/9/2001.

Revision Application challenging the said order was also rejected on 28/6/2002 and, thereafter, the present Petitions have been filed.

2. It is submitted on behalf of the petitioners that there was no legally enforceable liability to the extent of the cheque which was issued in favour of the respondent No.1 - Company. It is submitted that the learned Magistrate had mechanically issued process without ascertaining whether the cheque was issued for legally enforceable liability. The reliance was placed on the agreement entered into between the parties and it is submitted that this agreement was suppressed by the complainant. It is further submitted that, at the highest, the complainant had cause of action for recovery of money under civil law and not by way of criminal prosecution under section 138.

3. The learned Counsel appearing for respondent No.1 has vehemently opposed the submissions made by the learned Counsel for the petitioners. He submitted that the petitioners have successfully stalled the further proceedings in the trial court by filing two separate applications for recall of process which were on each occasion rejected by the Magistrate.

Thereafter, Revision Applications which were filed against these orders were also rejected.

4. In my view, there is no merit in the submissions made by the learned Counsel for the petitioners. The facts reveal that the petitioners have made various attempts to protract the proceedings. The question raised by the petitioners cannot be decided at this stage in this Court. The question whether there is legally enforceable liability can be determined by the trial court only after the presumption which is raised under section 139 is rebutted by the accused. Thus, there is no reason to interfere with the order passed by the Trial Court. All the three Writ Petitions are rejected. Hearing of the trial is expedited. Trial to be completed as expeditiously as possible and, in any case, by the end of June, 2005.

V.M. KANADE, J.